

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re OPTIONABLE
SECURITIES LITIGATION

No. 07 Civ. 3753 (LAK)

**MONARCH CAPITAL FUND LTD.'S OPPOSITION TO
COMPETING MOTIONS FOR APPOINTMENT
OF LEAD PLAINTIFF AND LEAD COUNSEL**

Movant Monarch Capital Fund Ltd. (“Monarch”) respectfully submits this opposition to the competing motions for appointment as lead plaintiff and lead counsel.

Of the nine competing motions to appoint lead plaintiff and lead counsel, Monarch’s motion is the only one that includes the proposed lead plaintiff with the largest financial interest in the litigation that will not be distracted in the litigation from defending against unique issues with respect to the lead plaintiffs’ involvement in the litigation. KLD Investment Management LLC (“KLD”) is the only proposed lead plaintiff with a greater financial interest in the litigation,¹ but appears to have come forward as a result of pre-emptive press releases filed by attorneys trolling for clients in order to commence litigation.

On May 10, 2007, KLD’s counsel issued a nationwide press release to announce that “it has initiated an investigation into Optionable, Inc.,” and that shareholders should call or e-mail the firm to discuss their legal rights. *See* Exhibit A hereto. At the time, KLD’s counsel had not filed a lawsuit and there is nothing in the press release claiming

¹ Two “groups” of investors, the “Patel Group” and the “Desai Group,” claimed larger losses but then withdrew their lead plaintiff motions. *See* Dkt. Nos. 47, 48.

that it had already been retained by any Optionable shareholder to conduct its “investigation.”

One day later, KLD’s counsel filed a complaint against Optionale on behalf of plaintiff Alexander Fleiss, alleging that defendants violated Section 11 of the Securities Act, 15 U.S.C. §77k, in conducting an IPO pursuant to a false and misleading registration statement in May 2005. *See* Dkt. No. 1. In their race to the courthouse, however, counsel went ahead and filed a Section 11 case on behalf of Mr. Fleiss even though Mr. Fleiss did not have a valid Section 11 claim. Mr. Fleiss did not purchase in the 2005 IPO, and is precluded from recovery under Section 11 because the price of Optionable stock did not drop below the IPO price. *See* 15 U.S.C. §77k(e) (generally limiting damages to a drop below the IPO price). None of the five other cases filed included a Section 11 claim. Mr. Fleiss remains a plaintiff in the now-consolidated case, but KLD’s counsel has since dropped Mr. Fleiss as a proposed lead plaintiff in favor of KLD.

Theses issues – the ability of KLD and its counsel to properly represent the class – will likely become the focus of the litigation, to the detriment of the class. As the institutional investor with the largest losses that is not impaired by such unique defenses, the class would best be served by Monarch’s appointment as lead plaintiff. Monarch’s estimated losses amount to approximately \$863,000, which, while smaller than the losses claimed by KLD, are nonetheless a substantial and highly motivate Monarch to represent the Class undistracted from the unique issues applicable to KLD.

* * *

For the foregoing reasons and as set forth in Monarch’s opening papers and based on all prior pleadings and proceedings herein, the Court should appoint Monarch Capital

Fund Ltd. as lead plaintiff and its counsel as lead counsel and deny the competing motions for lead plaintiff.

Dated: July 27, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system as follows:

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